

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>A.L. IVEY, III</b>	)	<b>CASE NO. 1:23 CV 852</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>JUDGE DONALD C. NUGENT</b>
	)	
<b>GIANT EAGLE, INC., et al.,</b>	)	<b>Magistrate Judge Thomas M. Parker</b>
	)	
<b>Defendants.</b>	)	<b><u>MEMORANDUM OPINION</u></b>

This Matter is before the Court on the Motion to Reconsider filed by Plaintiff, A.L. Ivey, III. (Docket #23.) Pursuant to Fed. R. Civ. P. 60(b), Plaintiff asks the Court to reconsider its December 18, 2023 Memorandum Opinion and Order dismissing his Complaint with prejudice and awarding attorneys' fees and costs, jointly and severally, against Plaintiff and his attorney, Taurean Shattuck.

Plaintiff argues that dismissal with prejudice for Plaintiff's failure to attend his deposition is too harsh a sanction and that dismissal *without* prejudice, coupled with an award of attorneys' fees and costs for deposition preparation, would have been more appropriate. With regard to who should be liable for those attorneys' fees and costs, Plaintiff argues that only Plaintiff, not Counsel, should be held liable, asserting that it was Plaintiff, not Counsel, who failed to appear at his scheduled deposition and that there is no evidence of record that Plaintiff is unable to satisfy the judgment himself.

On December 21, 2023, Defendant, Giant Eagle, Inc., filed a Brief in Opposition to Plaintiff's Motion for Reconsideration. (Docket #24.) Plaintiff filed a Reply Brief on January 16, 2024. (Docket #25.)

Mr. Ivey's failure to appear for his deposition was one of several factors considered by the Court in determining that the dismissal of Plaintiff's Complaint with prejudice was appropriate and in determining that both Plaintiff and Counsel are liable, jointly and severally, for Defendants' attorneys' fees and costs. The Court also considered Plaintiff's failure to fully respond to written discovery requests; failure to respond to a discovery deficiency letter; and, Defendants' reliance upon Mr. Shattuck's repeated confirmation – leading up to and including the day before the scheduled deposition – that Plaintiff would attend. These issues, along with Defendants' requests for attorneys' fees and costs, were raised in Defendants' Motions to Dismiss, yet Plaintiff/Mr. Shattuck never responded to said Motions or offered rebuttal. Instead, the day before responses to Defendants' Motions to Dismiss were due, Mr. Shattuck asked to withdraw as Counsel.

Under the facts and circumstances of this case, dismissal with prejudice was an appropriate sanction, as Plaintiff, represented by Counsel, failed to prosecute this case. Further, regardless of whether Plaintiff is able to satisfy the sanctions awarded in this case independently, Mr. Shattuck's conduct relative to discovery and the prosecution of this case warrants this Court's determination that Plaintiff and Mr. Shattuck are liable jointly and severally for Defendants' attorneys' fees and costs. Plaintiff argues that ordering joint and several liability for attorneys' fees and costs against a plaintiff and his attorney will "set a bad precedent" and may deter attorneys from representing individuals who may be indigent. This argument misses the point. Attorneys are required to comply with the Federal Rules of Civil Procedure, regardless of


their client's financial circumstances, and the expectation is that Counsel will comply with the Federal Rules of Civil Procedure, and all orders of the Court, and will communicate with the Court and/or opposing counsel in the event issues arise, thereby preventing unnecessary expense and avoiding unnecessary delay. That did not happen in this case and both Plaintiff and Counsel bear responsibility.

### **Conclusion**

For the foregoing reasons, Defendant's Motion to Reconsider (Docket #23) is hereby DENIED.

Giant Eagle seeks additional attorneys' fees and costs in the amount of \$1,920.00 – the fees and costs incurred addressing Plaintiff's Motion to Reconsider. The Court finds the requested amount to be reasonable. Accordingly, in addition to the amounts previously Ordered, Mr. Ivey and his attorney, Taurean J. Shattuck, are liable, jointly and severally, to Defendant, Giant Eagle, Inc., for additional attorneys' fees and costs in amount of \$1,920.00.

IT IS SO ORDERED.

  
DONALD C. NUGENT  
United States District Judge

DATED: January 18, 2024